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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2011-0463; FRL-9481-1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision was proposed in the Federal Register on June 30, 2011 and concerns volatile organic compound (VOC) and particulate matter (PM) emissions from commercial charbroilers. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**EFFECTIVE DATE:** This rule is effective on [Insert date 30 days from the date of publication in the Federal Register].

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2011-0463 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at <http://www.regulations.gov>, some

information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** David Grounds, EPA Region IX, (415) 972-3019, grounds.david@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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### **I. Proposed Action**

On June 30, 2011 (76 FR 38340), EPA proposed to approve the following rule into the California SIP.

Local Agency	Rule #	Rule Title	Amended	Submitted
SJVUAPCD	4692	Commercial Charbroiling	09/17/2009	05/17/10

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action

contains more information on the rules and our evaluation.

## **II. Public Comments and EPA Responses**

EPA's proposed action provided a 30-day public comment period. During this period, we received a comment from the following party.

1. Sarah Jackson, Earthjustice, letter dated August 1, 2011.

The comments and our responses are summarized below.

Comment #1: Earthjustice asserts that EPA must disapprove Rule 4692 for failure to satisfy CAA requirements for reasonably available control technology (RACT) and reasonably available control measures (RACM) because the rule does not require reasonable controls on under-fired charbroilers (UFC).

Response #1: For the reasons discussed in our proposed rule (76 FR 38340) and further below, we disagree and continue to believe that Rule 4692 requires all control measures that are "reasonably available" for implementation in the San Joaquin Valley (SJV), considering technical and economic feasibility. We respond more specifically below to Earthjustice's assertions regarding the technical and economic feasibility of UFC controls.

Comment #2: Earthjustice asserts that reductions from this source category played a significant role in SJVUAPCD's plan to reduce PM<sub>2.5</sub> levels in the SJV, but the current rule reduces emissions by only 0.02 tons/day - less than 1% of what was promised in SJVUAPCD's 2008 PM<sub>2.5</sub> plan.

Response #2: As discussed in our proposal, EPA evaluated Rule 4692 to determine whether it complies with the enforceability requirements of CAA section 110(a) and whether EPA's approval of it into the SIP would satisfy the requirements concerning attainment and reasonable further progress (RFP) in CAA section 110(l). Although this rule is not subject to the specific ozone RACT control requirement in CAA 182(b)(2) and (f), we also evaluated the control requirements in the rule to determine whether it requires all measures that are "reasonably available" for implementation in the SJV, considering technical and economic feasibility. We did not evaluate the emission reductions associated with this rule as such an evaluation belongs in the context of EPA's action on the State/District's RACM demonstration for the relevant NAAQS. For this reason, we did not propose to make a regulatory determination with respect to RACM in this rulemaking. Instead, we evaluated only the control requirements in the rule and considered whether additional controls for this particular source category are demonstrated to be technically and economically feasible for implementation in the area at this time. As stated in the Technical Support Document (TSD) for our proposal, EPA will take action in separate rulemakings on the State's RACM demonstration for the relevant NAAQS based on an evaluation of the control measures submitted as a whole and their overall potential to

advance the applicable attainment dates in the SJV. See Technical Support Document For EPA's Direct Final Rulemaking For the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District Rule 4692, Commercial Charbroiling, EPA Region 9, June 9, 2011, page 4 (TSD).

Comment #3: Earthjustice contends that SJVUAPCD's May 2009 Rule 4692 staff report states that UFC control is reasonably available and cost-effective at as little as \$5,800 per ton PM reduced, and that SJVUAPCD subsequently abandoned UFC control based on inflated new cost information. Earthjustice also asserts that the October 2009 staff report does not include UFC emission reduction estimates needed to recalculate UFC control cost-effectiveness. Finally, Earthjustice asserts that even using the new inflated cost information and the May 2009 emission estimates, UFC control is still more cost-effective than chain-driven charbroiler controls that SJVUAPCD and EPA are approving in Rule 4692 as reasonable.

Response #3: The \$5,800/ton estimate provided in SJVUAPCD's May 2009 staff report references a draft staff report that relies on 2007 estimates from the Bay Area Air Quality Management District (BAAQMD).<sup>1</sup> This was the low end of a range of estimates that BAAQMD had developed; the high end of BAAQMD's cost

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<sup>1</sup> Final Draft Staff Report for Proposed Amendments to Rule 4692, SJVUAPCD, May 21, 2009, pages C-4 and C-5.

estimates were over \$100,000/ton. See response to comment 5 below. In 2009, SJVUAPCD revised the low end of the range in the draft staff report by increasing it to \$22,300/ton, based on updated information including cost quotes from vendors of control equipment. SJVUAPCD's revised cost-effectiveness analysis still resulted in cost-per-ton estimates for UFC controls within the range of estimates developed by BAAQMD and the South Coast Air Quality Management District (SCAQMD). We believe these cost estimates were performed following standard accepted procedures and the commenter has not provided specific information to demonstrate otherwise.

Comment #4: Earthjustice comments that appendix C to SJVUAPCD's October 2009 staff report assigns emission reductions of 0.453 tons per year (tpy) per restaurant to potential UFC controls but never explains the basis for this estimate or why it is used instead of BAAQMD's estimate, which is based on scientific studies. Earthjustice asserts that 1.44 tons per day (tpd) (the median of the range provided in SJVUAPCD's May 21, 2009 staff report) is a more appropriate estimate of emission reductions from UFC controls.

Response #4: In response to EPA's inquiry regarding SJVUAPCD's cost-effectiveness evaluation, the District provided additional information to explain the cost-effectiveness analyses

in its August 2009 and September 2009 staff reports.<sup>2</sup> Specifically, SJVUAPCD identified the sources of its emission factor data and explained the assumptions underlying its calculations of the incremental cost-effectiveness of UFC controls. SJVUAPCD used information from Dun & Bradstreet on the number of restaurants operating within SJV, together with other reasonable assumptions about the numbers of UFC units and the quantities and types of meats grilled at these restaurants, to develop a "composite" emission factor for the source category, which provided the basis for its estimate of 0.453 tpy in potential PM<sub>2.5</sub> reductions per restaurant from the use of UFC controls. The SJVUAPCD notes that Earthjustice appears to have estimated PM<sub>10</sub> instead of PM<sub>2.5</sub> emissions, which increased the emission reduction estimates, and to have relied on less accurate estimates of the quantity of meat cooked and emission factors for various charbroiled meats. We have reviewed the additional information provided by SJVUAPCD and concur with the District that additional UFC controls have not been demonstrated to be "reasonably available" considering technical and economic feasibility in the SJV area at this time.

Comment #5: Earthjustice comments that except for the wet scrubber, no explanation is given for why SJVUAPCD's estimates

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<sup>2</sup> Email from Sandra Lowe-Leseth (SJVUAPCD) to David Grounds (EPA), September 22, 2011, with attachment.

for UFC control cost are much higher than BAAQMD's.

Response #5: As explained in our TSD, SJVUAPCD's cost estimates for UFC controls are within the range of cost estimates that other California districts have developed for similar controls. See TSD at 4. SJVUAPCD estimates that the cost of UFC controls ranges from \$22K - \$58K/ton PM<sub>2.5</sub> reduced,<sup>3</sup> BAAQMD estimates \$17K - \$143K/ton VOC or PM,<sup>4</sup> and SCAQMD estimates \$8K - \$34K/ton PM.<sup>5</sup> The commenter has provided no specific information to indicate otherwise.

Comment #6: Earthjustice comments that BAAQMD concluded that UFC control is cost-effective and adopted control requirements in 2007. Earthjustice also asserts that EPA's claim that UFC controls are not reasonably available because none have yet been certified to comply with BAAQMD's rule "is absurd since... certification is not required until the rule limits take effect in 2013."

Response #6: We explained in our TSD our reasons for concurring with SJVUAPCD's conclusion that UFC control is not reasonably available for implementation within the SJV at this

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<sup>3</sup> Final Staff Report for Amendments to Rule 4692, SJVUAPCD, October 8, 2009, pages 2 and C-6.

<sup>4</sup> Staff Report for Regulation 6, Rule 2, BAAQMD, November 2007, page 26 (BAAQMD Staff Report).

<sup>5</sup> Preliminary Draft Staff Report: Proposed Amended Rule 1138, SCAQMD, August 2009, Table 4.



time.<sup>6</sup> These include SJVUAPCD's cost-effectiveness analysis of UFC controls and concerns regarding the technical feasibility of UFC controls. We also noted that we are unaware of any other federal or state regulation or guidance suggesting UFC control is reasonably available for the commercial charbroiling industry except for BAAQMD's Regulation 6 Rule 2. We therefore disagree with Earthjustice's suggestion that the absence of compliance certifications under the BAAQMD's rule provided the only basis for our conclusion. As to BAAQMD's rule, we noted that most facilities in the Bay Area are too small to trigger the UFC control requirements of Regulation 6 Rule 2 and that no facilities had yet certified compliance with these limits. This information is relevant to our evaluation of technical feasibility because, until the BAAQMD confirms that sources are complying with the UFC control requirements, we have only limited information indicating that such controls are demonstrated to be technically feasible for the commercial charbroiling industry. It appears, however, that a large number of facilities (200) may be subject to BAAQMD's UFC control requirement<sup>7</sup> and will be required to certify by 2013 whether they are complying with the UFC control requirements of that rule. We encourage the District to reevaluate Rule 4692 at the earliest opportunity, taking into

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<sup>6</sup> EPA TSD, pages 4-5.

<sup>7</sup> BAAQMD Staff Report, page 18.

account the most recent information about the technical and economic feasibility of UFC controls, and to adopt all reasonably available control measures for commercial charbroiling that will expedite attainment of the PM<sub>2.5</sub> and ozone NAAQS in the SJV.

Comment #7: Earthjustice asserts that actual controls have been installed in California and provide empirical data on costs and emission reductions, and further claims that EPA and SJVUAPCD are ignoring this data and relying on conflicting information that lacks any reasonable basis.

Response #7: We do not dispute that UFC controls have been installed at facilities in California.<sup>8</sup> As discussed in our responses above, however, SJVUAPCD explained the basis for its assessment of the economic feasibility of UFC controls in SJV, including the empirical data underlying these evaluations, and we concur with the District's conclusion based on these evaluations that UFC control is not reasonably available in the SJV at this time.

### **III. EPA Action**

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is

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<sup>8</sup> See Final Staff Report for Amendments to Rule 4692, SJVUAPCD, October 8, 2009, pages 11-12.

fully approving this rule into the California SIP.

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of

1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations, Ozone,  
Particulate matter, Reporting and recordkeeping requirements,  
Volatile organic compounds.

September 30, 2011  
Dated:

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 et seq.

Subpart F - California

2. Section 52.220 is amended by adding paragraph (c) (379)

(i) (C) (5) to read as follows:

§52.220 Identification of plan.

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(c) \* \* \*

(379) \* \* \*

(i) \* \* \*

(C) \* \* \*

(5) Rule 4692, "Commercial Charbroiling," amended on September 17, 2009.

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